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In re Application of
ARGANBRIGHT, Daniel A., et al.
Application No.: 09/914,660
PCT No.: PCT/US00/05074
Int. Filing Date: 29 February 2000
Priority Date: 02 March 1999
Attorney Docket No.: BH2090.P1

For: ELECTRONIC COMMERCE
TRANSACTIONS WITHIN A
MARKETING SYSTEM THAT MAY
CONTAIN A MEMBERSHIP
BUYING OPPORTUNITY

DECISION ON

PETITION UNDER

37 CFR 1.47(a)

This is a decision on applicants' "Petition To File Patent Application On Behalf of Nonsigning Inventor Who Refuses To Sign Pursuant To 37 CFR 1.47(a)" filed in the United States Patent and Trademark Office (USPTO) on 17 December 2001.

BACKGROUND

On 29 February 2000, applicants filed international application PCT/US00/05074, which claimed a priority date of 02 March 1999. A Demand for international preliminary examination, in which the United States was elected, was filed on 18 September 2000, within nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 03 September 2001 (02 September 2001 was a Sunday).

On 31 August 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 15 October 2001, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the surcharge for late filing of the oath or declaration were required.

On 17 December 2001, applicants submitted the instant petition under 37 CFR 1.47(a), which was accompanied by, *inter alia*, a declaration of inventorship executed by seventeen of nineteen inventors; two statements of facts from Mr. Filigenzi; and copies of letters.

DISCUSSION

A petition under 37 CFR 1.47 must be accompanied by: (1) the fee under 37 CFR 1.17(h), (2) proof of pertinent facts, namely that the inventor refuses to sign after being presented with the application papers or cannot be reached after diligent effort, (3) a statement of the last known address of the inventor, and (4) an oath or declaration by the 37 CFR 1.47(a) applicant on behalf of himself or herself and the nonsigning applicant

Items (1), (2) and (3) have been met. (1) The petition fee of \$130 has been paid. (2) Mr. Filigenzi's statements of facts detail the attempts to contact the non-signing inventors and the non-signing inventors' refusals. (3) The last known address of non-signing inventor William Hazard is 17282 Timberdune Drive, MI 49417. The last known address of non-signing inventor Bruce H. Carlson is 6681 Checkerberry, Rockford, MI 49341.

As to (4), the declaration is defective. The declaration states, in part:

I hereby state that I have signed this Declaration on my own behalf and on behalf of the non-signing joint inventors; Bruce H. Carlson and William Hazard who have refused to sign. Accompanying this Declaration is a Statement of Facts in Support of Filing on Behalf of the Non-signing Inventors.

The declaration references the statement of facts. The statements of facts were created on 17 December 2001. Each signature on the declaration is dated prior to the creation of either statement of facts, as the signature dates range from 16 September 2001 through 10 December 2001. It is not possible for the inventors to have information or belief about documents that had yet to be written and which listed an event, the letter of 14 December 2001, that had yet to occur.

Second, the earliest signature on the declaration comes merely two days after a letter with copies of the application and the declaration is stated to have been mailed to Bruce H. Carlson. See Stat. of Facts (Carlson), par. 6. According to Mr. Filigenzi, he learned of the non-signing inventors' refusals to sign on 04 October 2001. Two inventors' signatures are prior to 04 October 2001. It is not clear how it was known that Bruce H. Carlson and William Hazard had refused to sign as early as 16 September 2001.

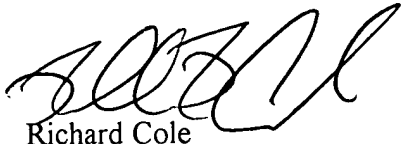
CONCLUSION

For the above reasons, applicants' petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

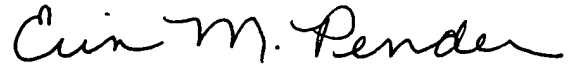
If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to timely file the proper

response will result in abandonment of this application. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of this letter marked to the attention of the Office of PCT Legal Administration.



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